might show that in fact he was not a stockholder or that he had paid the assessment. Such decisions do not call in question the jurisdiction of the court which ordered the assessment. They do not involve the problem of the principal case.

The effect of this decision appears to be that the judgment of a state court is conclusive throughout the Union as to all questions upon which it would be conclusive in the state where it is rendered. It affords consequently an interesting commentary upon a common interpretation put upon two much discussed cases: *Thompson* v. *Whitman*, 18 Wall. 457, and *National Exchange Bank* v. *Wiley*, 195 U. S. 257. W. T. B.

THE CONTENT OF COVENANTS IN LEASES.—Among the many troublesome problems in law those arising out of "covenants running with the land" are not the least. It is quite clear that in order for a covenant to "run" there must be an intimacy of relationship between it and the land, or, more properly, the estate, with which it passes. It is, then, vitally important to consider in each case the subject matter, the content of the covenant, and this matter of relationship.

Until recently courts and writers have with unfortunate unanimity contented themselves with laying down the familiar formula, "The covenant must touch and concern the land". Not until Professor Bigelow published his article on "The Content of Covenants in Leases", 12 MICH. L. REV. 639, 30 LAW QUART. REV. 319, did the subject receive in print the analysis and careful consideration it deserved.

A recent English case, *Barnes* v. *City of London Real Property Co.* (1918), 2 Ch. 18, however fully one may agree with the conclusion arrived at, is a good example of the lack of intelligent analysis so common in these cases. The lessee there sued the assignee of the lessor for breach of a covenant by the lessor to provide a housekeeper to keep the demised office in order. Sargent, J., said, "Then there comes the question whether the obligation ran with the land. The Conveyancing Act of 1881, s. 11, enacts that the obligation of a covenant entered into by a lessor with reference to 'the subject-matter of the lease' shall bind the reversionary interest. Was this an obligation with reference to the subject-matter of the lease? I do not think the law was intended to be altered at all by that enactment as regards the character of the obligation. I think the words of the statute expressed the same idea as that conveyed by the old phrase 'touching the land.' After considering the various authorities which have been cited, and particularly the case of *Clegg* v. *Hands* (44 Ch. D. 503), I cannot entertain a doubt that this obligation to clean, or to clean and dust by means of the provision of a housekeeper for the purpose, is something with reference to the subject-matter of the lease; certainly it has at least as close reference to the subject-matter of the lease as an obligation not to sell any beer on the property except beer provided by the lessor. In my judgment this is clearly something that touches the subject-matter. It affects the value of the rooms for the purpose for which they were let while in the occupation of the lessees. It seems to me

to be a very valuable right of the lessees to have the cleaning and dusting performed by some one who is appointed for the purpose by the landlords for all the tenants." *Clegg* v. *Hands,* it should be observed, was in equity and the court there pointed out that whatever might be the plaintiff's position as assignee of the reversion to enforce the defendant's covenant as lessee to sell on the premises only ale, etc. bought of the lessors, at any rate plaintiff *as assignee of the benefit of such covenant* should succeed on the principle of *Tulk* v. *Moxhay.*

It may be said that generally, though not necessarily (See 12 MICH. L. REV. 645, 646), covenants that are beneficial to the lessee or lessor as such and only so long as he occupies such position have the necessary intimacy of relationship. See *Vyvyan* v. *Arthur,* 1 B. & C. 410. Such test, however, is of value only when it is the benefit side of the covenant that is under consideration. It seems clear that assignees of the lessee in the principal case would have been entitled to enforce the covenant as one running with the estate of the lessee. The question before the court, however, was whether the burden of the covenant was binding upon the defendant by virtue of his being assignee of the reversion. The covenantor's totality of rights, privileges, and powers as owner of the reversion was unaffected by the obligation of the covenant, hence the problem cannot be settled by the application of such test.

In 12 MICH. L. REV. 656, Professor Bigelow has said, "Whether the burden of a covenant by the lessor that benefits the lessee as such should merely for that reason follow the reversion into the hands of an assignee is more difficult of decision. It is arguable that the second section of 32 H. 8, ch. 34, which gives the lessee and his assigns the same rights against the assignee of the lessor as against the lessor will produce the same result that follows from the subordinate nature of the lessee's estate in the situation just considered, and that since the covenant is made by the lessor for the purpose of benefiting the lessee's estate it is for this reason alone within the purview of the statute. So far as the decisions go those that deal with the liability of the assignee of the lessor under these circumstances hold him to be bound." Citing *Mansel* v. *Norton,* L. R. 22, Ch. D. 769; *Gerzebek* v. *Lord,* 33 N. J. L. 240; *Myers* v. *Burns,* 35 N. Y. 269; *Storandt* v. *Vogel & Binder Co.,* 140 App. Div. (N. Y.) 671. The principal case in its conclusion lends support to the view expressed. R. W. A.